(2021) 07 NCLT CK 0015

In the National Company Law Tribunal

Case No : CA NO. 31/2021 In CP NO.228/ALD/2020, CA NO.192/ALD/2020

Naini Tissues Ltd — APPELLANT

Vs

Naini Papers Ltd — RESPONDENT

Date of Decision : 14-07-2021

Acts Referred:
Companies Act, 2013 — Section 133, 230, 232

Citation : (2021) 07 NCLT CK 0015

Hon'ble Judges : Rajesh Dayal Khare, Member (J)

Bench : Single Bench

Advocate : Vinay Shukla, Ankit Singh, Himanshu Gupta, Raghav, Kuldeep Singh

Final Decision : Allowed/Disposed Of

Judgement

1. The present Petition is filed by Petitioner Companies under Sections 230 to 232of the Companies Act, 2013 read with Rules framed thereunder, as

in force from time to time, for the sanction of the proposed Scheme of Amalgamation of Naini Tissues Limited with Naini Papers Limited and their

respective Shareholders and Creditors (hereinafter referred to as ""Scheme"" or ""Scheme of Amalgamation""). (A copy of the Scheme has been

annexed and marked as Annexure P-1 to the Company Petition No. 228/ALD of 2020 from Page No. 38 to 64).

2. The proposed Scheme of Amalgamation has previously been approved by the Board of Directors of the Transferor Company and the Transferee

Company in the respective meetings held on 18th March, 2020.

3. The factual position of the Authorized, Issued, Subscribed and Paid up share Capital of both the Petitioner Companies are described well in the

present Company Petition, which are being reproduced hereunder:

a. The Authorised Share Capital of the Transferor Company is 317,00,00,000/- divided into 1,70,00,000 Equity Shares of Issued, Subscribed and Paid up Capital of the Company is 317,00,00,000 divided into 1,70,00,000Equity Shares of 10 each aggregating 17,00,00,000.

b.The Authorised Share Capital of the Transferee Company is *20,00,00,000 divided into 2,00,00,000 Equity Shares of 310 each aggregating 20,00,00,000. The present

Issued, Subscribed and Paid up Share Capital of the Company is 315,00,00,000 divided into 1,50,00,000Equity Shares of 4. The Rationale of the proposed Scheme of Amalgamation is elaborately described in the present Company Petition which may be summarized as

under:

a. Both the Transferor Company and the Transferee Company are closely held public limited companies under common management and control. The proposed

amalgamation of the Transferor Company with the Transferee Company would result in business synergy, cons siness synergy, consolidation of these Group

Companies and pooling of their resources into a single entity.

b. The proposed Scheme of Amalgamation would result in pooling of physical, financial and human resource of these Companies for the most beneficial utilization of

these factors in the combined entity.

c. The proposed Scheme of Amalgamation will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction in

overheads, better and more productive utilization of financial, human and other resource and enhancement of overall business efficiency. The proposed Scheme will

enable these Companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth.

d. The proposed amalgamation will result in significant reduction in multiplicity of legal and regulatory compliances and will enhance the management efficiency.

e. The proposed Scheme would enhance the shareholders' value of the Transferor Company and the Transferee Company.

f. The said Scheme of Amalgamation will have beneficial impact on Transferor Company and the Transferee Company, their shareholders, employees and other

stakeholders and all concerned.

g. The Scheme of Amalgamation is proposed for the aforesaid reasons. The Board of Directors and Management of the Transferor Company and the Transferee

Company is of the opinion that the proposed Scheme is in the best interest of these Companies and their stakeholders.

5. The Petitioners have stated that the accounting treatment proposed in the Scheme of Amalgamation is in conformity with the accounting standards

prescribed under Section 133 of the Companies Act, 2013. (Certificates from the respective Statutory Auditor of the Petitioner Company are annexed

andmarked as Annexure P/10 to the Company Petition No. 228/ALD of 2020 from Page no. 221 to 224).

6. It has also been stated in the Petition that none of the Directors of the Petitioner Companies have any material interest in the Scheme, save as

except to the extent of shareholding in the abovementioned Petitioner Companies.

7. It has also been stated in the Petition that the Scheme is not prejudicial to the interest of the Shareholders and Creditors of the PetitionerCompanies

and the Petition is made bona fide and is in the interest of both the Petitioner Companies and their Shareholders, Secured Creditors and Un-secured

Creditors as a whole and is also just and equitable.

8. It is also submitted that the Board of Directors of the Petitioner Transferor Company and the Transferee Companyhave determined the share

exchange ratio as under:

a. The Transferee Company will issue 149 (One Hundred and Forty Nine) Equity Shares of 10 each, credited as fully paid up, for every 100 (One hundred) Equity

Shares of 9. The Petitioner Companies have also annexed the valuation and share exchange ratio report dated 18th March, 2020given by Sh.Devinder Arora,

IBBI Registered Valuer having registration no. IBBI/RV/05/2019/10557for valuation of shares, securities and other financial Assets for determination

of share exchange ratio.

10. A perusal of the present Petition discloses that initially the Petitioner Companies had filed a Company Application No. 192/ALD of 2020 seeking

directions of this Tribunal to dispense with the requirement of convening the meetings of Equity Shareholders, and Un-secured Creditors of the

Transferor Company andEquity Shareholders, Secured and Un-secured Creditorof the Transferee Company. Accordingly, this Tribunal vide its order

dated 08th October, 2020, allowed the above mentioned prayers, by dispensing the meeting of the Equity Shareholders, and Un-secured Creditors of

the Transferor Company andEquity Shareholders, Secured and Un-secured Creditorof the Transferee Company.

11. That this Tribunalvide its order dated 12th November, 2020, directed to issue notice of hearing in respect of present Company Petition to the

Statutory Authorities and also to make paper publication in this respect in English Newspaperâ??Hindustan Times"",and Hindi Newspaper-""Amar

Ujala"" widely circulated over the area where the registered office of the Petitioner companies is situated.

12. In compliance thereof, the Petitioner Companies have filed Affidavit of service and publication, confirming that notices have been duly published in

English Newspaperâ??Hindustan Times"",and Hindi Newspaper-""Amar Ujalaâ?. The Petitioner Companies have also served notice of the Company

Petition to (a) the Central Government through the office of the Regional Director, Northern Region, Ministry ofCorporate Affairs, New Delhi; (b) the

Registrar of Companies, Uttarakhand, Dehradun; (c)The Official Liquidator, Uttarakhand, Dehradun,and(d) the Income Tax Department.

13. In response to the above stated notice, the Regional Director has filed his report/affidavit dated 02th February, 2021, along with the report of the

Registrar of Companies. The Regional Director, in Para 5 of his i Report, has submitted that the Appointed Date of the proposed scheme of

amalgarnation is 01.04.2020; and that as per Clause 2.1.2.(xiv) the proposed scheme of amalgamation provided for protection of the interest of the

employees and employee benefits of the Transferor Company. The Learned Regional Director, in his Report, has not made any major observation in

his report.

14. The Official Liquidator has also filed his report and no objection has been raised by him to the proposed Scheme of Amalgamation.

15. The Income Tax Department has also issued 'No Objection Letters with respect to both the Petitioner Companies remarking that the said scheme

of amalgamation has not been drawn to avail any tax benefits.

16. I have gone through the reports of the Ld. Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi, the Official Liquidator,

Uttarakhand and the Income Tax Department. After perusing the same,I am of the view that the sanction of the present Scheme is not against public

policy, nor it would be prejudicial to the public interest at large.

17. In addition to above, all the statutory compliance either seems to have been complied with or further undertaken for making compliances by

Petitioner Companies. Therefore, the present CompanyPetition deserves to be allowed in terms of its Prayer clause. In the result, the Scheme of

Amalgamation annexed to Company Petition is duly approved and hereby sanctioned.

18. In the result, the proposed Scheme of Amalgamation which is annexed to the Company Petition stand approved and sanctioned andall the business,

undertakings, assets, properties, investments, capitaland liabilities of the TransferorCompany, of whatsoever nature and kind and wherever situated,

stands transferred to the Transferee Company andPetitioner Companies are required to act upon as per terms and condition of the sanctioned Scheme

and the same to be binding on its Shareholders, Secured Creditors and Un secured Creditors of the above named Petitioner Companies and also on the

Petitioner Companies with effect from the Appointed date, i.e., 1st day ofApril, 2020.

19. While approving the Scheme as above, it is clarified that this order should not be construed as, in any way, granting exemption from payment of

stamp duty (if any is applicable), taxes (including Income Tax, GST or any other charges, if any are applicable) and payment in accordance with law

or in respect to any permission/compliance with any other requirement which may be specifically required under any law.Also, the Transferor

Company shall stand dissolved without undergoing the process of winding up.

20. The Petitioner Companies shall within thirty (30) days of the date of the receipt of this order cause a certified copy of this order to be delivered to

the Registrar of Companies for registration.

21. All concerned regulatory authorities to act on a copy of this order annexed with the Scheme duly authenticated by the Assistant Registrar,

National Company Law Tribunal, Allahabad Bench.

22. Any person interested shall be at liberty to apply before this Tribunal in the above matter for such directions as may be necessary.

23. Accordingly, the present Company Petition bearing CP (CAA) 228/ALD of

2020 is allowed and petition is accordingly, stands disposed of.